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December 14, 2011

*Via E-mail and Federal Express*

Richard Y. Nelson, Jr.  
Director  
Montgomery County Department of Housing and  
Community Affairs  
100 Maryland Avenue, 4<sup>th</sup> Floor  
Rockville, Maryland 20850

Re: Comment - Housing Policy Review

Dear Rick:

As you know, this firm represents the ROFR Coalition, a group of 30 multifamily property owners and related industry leaders who share the common goal of amending the right of first refusal (“**ROFR**”) provisions of Chapter 53A of the Montgomery County Code (“**Code**”) so that the availability of affordable housing can be preserved and enhanced without imposing unnecessary burdens on multifamily property owners. It is our understanding that the Department of Housing and Community Affairs (“**DHCA**”) is seeking public comments in relation to its proposed review and update of *Montgomery County -- The Place to Call Home, A Housing Policy for Montgomery County, Maryland* dated July 2001 (the “**Housing Policy**”). The Housing Policy is intended to guide the implementation of Montgomery County’s housing programs and policies, provide recommendations for improving them, and direct the allocation of resources. The members of the ROFR Coalition submit this letter as a summary of their comments and suggestions with regard to the Housing Policy as it relates to Chapter 53A, and request that this letter be considered by DHCA in finalizing the Housing Policy of 2012.

ROFR Coalition members are gravely concerned about the costly, time consuming and unnecessary burdens imposed by Chapter 53A on ordinary rental housing sale and purchase transactions. The ROFR Coalition fully supports the objective of insuring that quality affordable housing is available to Montgomery County (“**County**”) residents, but believes that certain provisions of Chapter 53A are actually counter-productive to reaching that objective and to the existing Housing Policy. Consequently, Chapter 53A should be amended to further the County’s Housing Policy goals and objectives. In light of the Housing Policy, the ROFR Coalition seeks amendment of Chapter 53A as set forth below.

**Unnecessary and seldom used provisions of Chapter 53A, including ROFRs available to DHCA and tenant organizations should be eliminated.** Included on the DHCA’s list of issues to address

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in the 2012 Housing Policy is the following: “Review existing procedures and enact improvements that remove impediments to adequate, efficient and expeditious review of affordable housing and alternative housing.” The ROFR Coalition fully supports this goal, and to fully implement this goal, Chapter 53A must be amended. Since the Chapter 53A amendments were enacted in 2007, neither DHCA nor a tenant organization has purchased a rental housing facility pursuant to Chapter 53A. Nonetheless, the statutory notice and certification periods applicable to tenant organizations and the documentation requirements applicable to providing a ROFR to DHCA continue to delay and unduly burden rental facility sales. In addition, granting HOC an automatic 180 day financing contingency wreaks havoc on these transactions and is unnecessary since HOC has indicated that it can exercise its ROFR without relying upon the financing contingency currently available under Chapter 53A.

**Rental agreements should be automatically accepted.** DHCA has also expressed interest in supporting “naturally occurring affordable housing”. Amending Chapter 53A to provide automatic acceptance by the County of rental agreements containing specified statutory terms would encourage multifamily rental property purchasers to enter such rental agreements with the County, which would broaden the availability of privately owned affordable housing. The ROFR Coalition proposes that Chapter 53A be amended so that any rental agreement presented to the County would be automatically accepted if it complied with statutorily specified terms. Because Chapter 53A currently affords the County absolute discretion as to whether and on what terms it will accept a rental agreement, many rental housing facility owners have concluded that the rental agreement is not a realistic avenue for Chapter 53A compliance. Thus, buyers who might otherwise agree to the statutory restrictions under Chapter 53A do not even investigate the rental agreement option because of the uncertainty associated with the current process.

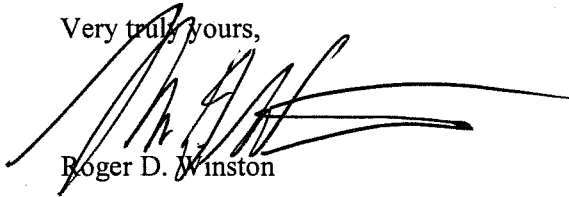
**ROFR exemptions should be restored.** The Housing Element to the General Plan approved by the County Council on March 29, 2011 (“**Housing Element**”) includes the stated objective of providing economically sustainable housing and neighborhoods. Initially, the ROFR provisions of Chapter 53A did not apply to rental facilities that were built after 1981, so developers and property owners relied upon the same. However, when amendments to Chapter 53A were enacted in 2007, all rental facilities became subject to the ROFR provisions of Chapter 53A, regardless of date of construction, and therefore all property owners have been required to absorb the unanticipated expenses associated with ROFR compliance. The significant amendments adopted in 2007 have caused a certain degree of economic uncertainty for multifamily property owners, which is inconsistent with the County’s goal of providing economically sustainable housing. ROFR exemptions should include transactions involving transfers of membership interests among existing members as well as transactions involving properties built after February 5, 1981. The ROFR Coalition is seeking amendment to the ROFR law to restore the law’s original purpose by repealing the 2007 amendments so that properties built after 1981 would again be exempt from the Chapter 53A ROFR requirements, as such exemption is consistent with the original purpose and intent of Chapter 53A. In addition, changing ownership allocations among existing members should not trigger requirements of ROFR compliance, whether such membership interests are for minority or majority interests.

**Conversion definition.** The first goal of the Housing Element is the “conservation and care of existing neighborhoods and the existing housing stock.” Unfortunately, as written, Chapter 53A has the effect of discouraging multifamily property owners from undertaking certain renovations and

rehabilitation to rental facilities. Chapter 53A should be amended so that the "conversion" definition would be revised so that neither (i) raising rents within the voluntary rent guidelines (plus an allowance for capital expenditures), nor (ii) rehabilitating property when reasonable alternative housing is offered, would be deemed a conversion.

In our prior meetings, we discussed the onerous impacts of Chapter 53A on multifamily property owners, as well as the ROFR Coalition's efforts to amend the same. The ROFR Coalition's proposed amendments to Chapter 53A are completely consistent with the County's goals and objectives for the proposed revisions to the Housing Policy. As such, we respectfully request that the comments provided by the ROFR Coalition in this letter be addressed by the County and incorporated in its final revision of the 2012 Housing Policy. We look forward to working with you to bring these amendments to fruition in 2012.

Very truly yours,

A handwritten signature in dark ink, appearing to read "R. Winston", with a long horizontal flourish extending to the right.

Roger D. Winston

cc: PHED Committee (Councilmembers Nancy Floreen, Marc Elrich and George Leventhal)